

## **SUBCHAPTER A : REQUIREMENTS OF WATER USE PERMIT APPLICATIONS**

### **GENERAL PROVISIONS**

#### **§295.1. Use of Forms.**

The executive director will furnish without charge forms and instructions for preparing an application. The use of such forms is not mandatory, but the information required by such forms must be provided in any event. Supplements may be attached if there is not sufficient space on the printed form. If supplements are used, the data and information entered thereon shall be separated into paragraphs numbered to correspond with those on the printed form. A supplement explaining the project and planned operation may be attached to an application.

#### **§295.2. Preparation of Application.**

All applications shall be typewritten or printed legibly in ink. Illegible applications will be returned to the applicant. Applicants will be notified if additional information is needed to process an application, pursuant to §281.4 of this title (relating to Applications for Use of State Water). The applicant should confer with the staff of the executive director on any questions concerning preparation of the application, especially if the application is unusual or unique. Upon express written or verbal approval of the applicant or the applicant's agent, any employee of the commission may make non-substantive changes in any documents submitted by the applicant. Substantive changes in an application may be made only by the applicant or the applicant's agent who submitted the application and only in the form of a written, notarized amendment to the application signed by the proper person; provided, however, that no substantive changes may be made after an application has been filed with the chief clerk of the commission by the executive director.

#### **§295.3. Name and Address.**

For each applicant, the full name, post-office address, telephone number, and social security or federal identification number shall be given. If the applicant is a partnership, it shall be designated by the firm name followed by the words "a partnership." If the applicant is acting as trustee for another, it shall be designated by the trustee's name followed by the word "trustee." If one other than the named applicant executes the application, the name, position, post-office address, and telephone number of the person executing the application shall be given.

#### **§295.4. Source of Supply.**

The applicant shall clearly state the name of the source from which the diversion or use of water is proposed. "Source" refers not to the origin of the water, but to the stream, spring or body of water from which the proposed diversion will be made. If the source has no name, it may be designated as "an unnamed watercourse" or "an unnamed spring." If the source is a tributary, the next stream into which it flows and the river basin wherein it lies shall be given.

#### **§295.5. Amount and Purpose of Diversion and Use.**

The total amount of water to be used shall be stated in definite terms, i.e., a definite number of acre-feet annually or, in the case of a seasonal, emergency, or temporary permit application, over the period for which application is made. The purpose or purposes of each use shall be stated in definite terms. If the water is to be used for more than one purpose, the specific amount to be used for each purpose shall be clearly set forth. If the amount to be consumptively used is less than the amount to be diverted, both the amount to be diverted and the amount to be consumptively used shall be specified.

**§295.6. Rate and Method of Diversion.**

If the applicant proposes to divert from a stream or reservoir, the maximum rate of diversion in gallons per minute or cubic feet per second shall be stated. The method to be used shall be described as portable pump, stationary pump, or gravity flow.

**295.7. Location of Diversion Point, Reservoir, and Dam.**

The application shall state the location of point(s) of diversion and, if applicable, the location of dam(s) or off-channel storage reservoir(s). These locations shall also be shown on the application maps with reference to a corner of an original land survey and/or other survey point of record, giving both course and distance. The distance and direction from the nearest county seat or town shall also be stated.

**§295.8. Return and Surplus Water.**

The application shall describe the location at which return water or surplus water will be returned to the stream. If practicable, this must also be shown on the application map. In addition, the application shall state with as much accuracy as possible the quantity of return flow expressed in acre-feet per annum.

**§295.9. Conservation Plan.**

An application relating to the appropriation or use of state water must include a water conservation plan meeting applicable requirements contained in this section. An application not accompanied by such plan is not administratively complete and shall not be considered by the commission, unless expressly exempted by this section. The plan must demonstrate that reasonable diligence will be used to avoid waste and achieve water conservation in order that appropriated waters will be beneficially used for the authorized purposes. Conservation means those practices, techniques, and technologies that will reduce the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water so that a water supply is made available for future or alternative uses for the benefit of the public health, safety and welfare, and of the environment.

(1) Applications to appropriate or to use water for municipal use, industrial or mining use, or irrigation use. A water conservation plan submitted with an application to appropriate or to use state water for municipal use, industrial or mining use, or irrigation use must be submitted in accordance with the guidelines set forth in chapter 288 of this title (relating to Water Conservation Plans, Guidelines and Requirements).

(2) Application to appropriate or to use water by wholesale water suppliers. A water conservation plan submitted with an application to appropriate or to use state water by a wholesale water supplier must be submitted in accordance with the guidelines set forth in Chapter 288 of this title.

(3) Applications to appropriate or to use water for any other purpose or use. A water conservation plan submitted with an application to appropriate or to use state water for any other purpose or use shall include a water conservation plan providing information where applicable about those practices, techniques, and technologies that will be used to reduce the consumption of water, prevent or reduce the loss or waste of water, maintain or improve the efficiency in the use of water, increase the recycling and reuse of water, or prevent the pollution of water.

(4) Applications to amend existing water rights. An application to amend an existing water right for any of the following reasons must be accompanied by a water conservation plan in accordance with the applicable provisions of this section:

(A) to increase the amount of the appropriation;

(B) to extend the term of the appropriation;

(C) to change the place of use, unless the request is to expand the amount of acreage to be irrigated adjacent to the existing, authorized irrigated tract without an increase in the appropriation; or

(D) to change the purpose or use of the appropriation; (a conservation plan to change the purpose or use of an appropriation need only address the proposed change in purpose or use; however, the executive director may require an applicant to submit a water conservation plan which addresses the applicant's entire water uses and/or appropriations).

(5) Exemptions to the requirement to submit water conservation plans. Applications to impound water for in-place use only, for emergency use in accordance with §295.91 of this title (relating to Requirements for Application for Emergency Water Use Permit), and for temporary use of water in accordance with §295.61 of this title (relating to Additional Requirements for Applications for Temporary Permits) are exempt from having to submit a water conservation plan pursuant to this section. However, all water right holders must exercise reasonable diligence to avoid waste and achieve water conservation so that the right to use state water is limited to the amount which is being or can be beneficially used for the authorized purposes but not to exceed the amount specifically appropriated.

#### **§295.10. Proposed Installation or Reservoir.**

If the applicant does not have the power of condemnation and proposes to inundate or to place any installation upon the land of another, the name(s) and address(es) of such landowner(s) shall be given. A copy of a duly acknowledged written easement, consent, or license from the landowner(s) or of a written lease or other evidence of agreement between the landowner(s) and the applicant shall be filed with the application.

#### **§295.11. Multiple Ownership of Existing Reservoir.**

Except as otherwise provided herein, if an existing reservoir inundates land owned by more than one person, an application for a permit to authorize the dam and reservoir and to use state water impounded in the reservoir shall be joined by all of the landowners. A copy of any operating agreement affecting the reservoir or the distribution of water therefrom shall be submitted with the application. If there is incomplete joinder, the applicant shall submit the name and address of any landowner who does not join the application, and shall file a copy of an easement or a consent, license, lease, or other type of agreement from the landowner(s), as provided in §295.10 of this title (relating to Proposed Installation or Reservoir).

**§295.12. Storage in Another's Reservoir.**

In an application for a permit to appropriate state water for storage in another's lawful reservoir and/or to divert and use water therefrom, a copy of a duly acknowledged document evidencing the consent of the reservoir owner shall be submitted. If the reservoir is a project of the Soil Conservation Service, U. S. Department of Agriculture, a copy of a duly acknowledged document evidencing consent from the Soil and Water Conservation District and any others having jurisdiction over the reservoir shall be provided.

**§295.13. Interwatershed Transfers.**

An applicant seeking to transfer state water from one watershed to another watershed shall so state in the application. Hearing shall be held in the same manner as required for water use applications. For purposes of this section, a watershed refers to a named river basin or coastal basin.

**§295.14. Signature of Applicant.**

The application shall be signed as follows:

(1) If the applicant is an individual, the application shall be signed by the applicant or the applicant's duly appointed agent. An agent shall provide written evidence of his or her authority to represent the applicant. If the applicant is an individual doing business under an assumed name, the applicant shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.

(2) A joint application shall be signed by each applicant or each applicant's duly authorized agent, with written evidence of such agency to be submitted with the application. If land is owned by both husband and wife, each shall sign the application. Joint applicants shall select one among them to act for and represent the others in pursuing the application with the commission, with written evidence of such representation to be submitted with the application.

(3) If the application is by a partnership, the application shall be signed by one of the general partners. If the applicant is a partnership doing business under an assumed name, it shall attach to the application an assumed name certificate from the county clerk of the county in which the principal place of business is located.

(4) If the applicant is an estate or guardianship, the application shall be signed by the duly appointed guardian or representative of the estate, and a current copy of the letters issued by the court shall be attached to the application.

(5) If the applicant is a corporation, public district, county, municipality or other corporate entity, the application shall be signed by a duly authorized official. Written evidence in the form of by-laws, charters, or resolutions which specify the authority of the official to take such action shall be submitted. A corporation may file a corporate affidavit as evidence of the official's authority to sign.

(6) If the applicant is acting as trustee for another, the applicant shall sign as trustee, and in the application shall disclose the nature of the trust agreement and give the name and current address of each trust beneficiary.

**§295.15. Sworn Application Required.**

Each applicant shall subscribe and swear to the application before any person entitled to administer oaths, who shall also sign his or her name and affix his or her seal of office to the application.

**ADDITIONAL REQUIREMENTS FOR THE STORAGE OF  
APPROPRIATED SURFACE WATER IN AQUIFERS**

**§295.21. Aquifer Storage and Retrieval Projects.**

(a) For the purposes of this chapter, aquifer storage and retrieval projects that propose the underground storage of appropriated surface water for subsequent retrieval and beneficial use shall be limited to the following areas:

(1) the Anacacho, Austin Chalk, and Glen Rose Limestone aquifers in Bexar County and Medina County;

(2) the Carrizo-Wilcox aquifer in Bexar, Webb, Smith, Wood, Rains, and Van Zandt Counties;

(3) the Hickory and Ellenberger aquifers in Gillespie County;

(4) the Gulf Coast aquifer in Cameron and Hidalgo counties;

(5) areas designated by the commission as “critical areas” under §35.008 of the Texas Water Code; and

(6) other areas of the state designated by the Texas Water Development Board in accordance with §11.155 (b)(3) of the Texas Water Code.

(b) Except as provided by subsection (c) of this section, an applicant shall file the appropriate application and obtain the issuance of the following:

(1) a temporary or term permit under Chapter 297 of this title (relating to Water Rights, Substantive) and the necessary authorization under Chapter 331 of this title (relating to Underground Injection Control) prior to commencement of construction of Phase I of an aquifer storage and retrieval project, as defined in §297.1 of this title (relating to Definitions); or

(2) a permit under §297.11 of this title (relating to Permit Under Texas Water Code, §11.121) and the necessary authorization under Chapter 331 of this title (relating to Underground Injection Control) prior to actual storage of state water for underground storage and retrieval for purposes other than a Phase I project.

(A) An application for permit under paragraph (2) of this subsection will not be accepted for processing by the executive director until such time as the applicant has obtained the necessary authorizations and successfully completed a Phase I project.

(B) A final order granting a permit or amendment to a permit authorizing the storage of appropriated water in aquifers for subsequent beneficial use, for purposes other than a Phase I project, will not be issued before June 1, 1999.

(c) A water right permit is not required for Phase I of an aquifer storage and retrieval project that proposes the temporary storage of appropriated surface water in an aquifer for testing and subsequent retrieval and beneficial use if the diversion and purpose of use (e.g., municipal, industrial, etc.) of the surface water is covered by an existing water right. The water right holder or person holding a valid contract with a water right holder shall notify the executive director, in writing, of the proposed temporary storage and shall submit the information required by §295.22 of this title (relating to Additional Requirements for Storage of Surface Water for Subsequent Retrieval and Beneficial Use) with the written notification not later than 60 days prior to the proposed temporary storage of water in an applicable aquifer. Upon completion of Phase I of the project, an amendment to the existing water right is required for permanent authorization to store appropriated surface water in an aquifer for subsequent retrieval and beneficial use.

(d) This section does not apply to any existing permit or permit amendment issued by the commission or to any administratively complete application for a permit or permit amendment filed with the commission prior to June 5, 1995.

Adopted December 18, 1996

Effective January 10, 1997

**§295.22. Additional Requirements for the Underground Storage of Surface Water for Subsequent Retrieval and Beneficial Use.**

(a) Phase I projects. In addition to the applicable information required by Subchapter A of this chapter (relating to Requirements of Water Use Permit Application), the appropriate permit application must include:

(1) all information sufficient to demonstrate compliance with Chapter 331, Subchapter K of this title (relating to Additional Requirements for Class V Aquifer Storage Wells) and those portions of Chapter 331, Subchapters A and H of this title (relating to General Provisions and Standards for Class V Wells, respectively) which relate to aquifer storage injection wells;

(2) a map or plat showing the proposed depth and location of all injection facilities, retrieval wells, and the aquifer in which the water will be stored;

(3) if applicable, a letter from the Texas Water Development Board indicating an area has been designated in accordance with §11.155 (b)(3) of the Texas Water Code; and

(4) if applicable, the application for storage of surface water in an underground water reservoir or a subdivision of an underground water reservoir, as defined by Chapter 35 of the Texas Water Code, that is under the jurisdiction of an underground water conservation district, must include:

(A) evidence of service, by certified mail, of a copy of the application or notification submitted in accordance with §295.21 of this title (relating to Aquifer Storage and Retrieval Projects) to the underground water conservation district having jurisdiction over the aquifer; and

(B) a copy of an agreement, if any, reached by the applicant with the underground water conservation district reflecting the applicant's consent to cooperate in the development of, and abidance

with, the rules governing the injection, storage, or retrieval of appropriated surface water in the underground water reservoir or a subdivision thereof.

(b) Phase II projects. In addition to the information required by subsection (a) of this section, the appropriate permit application must include:

(1) a copy of the final report on the Phase I project required under §331.185(b) of this title (relating to Monitoring and Reporting Requirements);

(2) an operations plan for the life of the project detailing the following:

(A) injection rates and volumes;

(B) frequency of injection periods;

(C) retrieval rates and volumes;

(D) frequency of retrieval periods;

(E) radial distances of travel from the injection wells on an annual basis;

(F) maximum extent of travel for the life of the project; and

(G) location of all injection, retrieval and monitoring wells.

(3) a report identifying any potential impacts to artificial penetrations within one-quarter mile of the perimeter of the buffer zone, as described in subsection (e)(5) of this section;

(4) a proposed monitoring plan which would address the quality of water injected and retrieved and the water levels of the receiving body of underground water within the perimeter of the buffer zone and within one-quarter mile of the perimeter of the buffer zone. In addition, the proposed monitoring plan shall describe how waters injected and retrieved will be measured and reported;

(5) other information as determined by the executive director as necessary for the protection of underground sources of drinking water.

(c) Control of Stored State Water. If the applicant does not have the power of condemnation and proposes to store state water in and withdraw it from underneath or to place any installation upon the land of another, the name(s) and address(es) of such landowner(s) shall be given. A copy of a duly acknowledged written easement, consent, or license from the landowner(s) or of a written lease or other evidence of agreement between the landowner(s) and the applicant shall be filed with the application.

(d) Map Requirements. All maps, plats and drawings accompanying the application shall be submitted in accordance with §§295.121-295.123 of this title (relating to Requirements, Drawings Not To Be Folded and Content Requirements of Maps, respectively).



(e) Additional Map Requirements. In addition to the preceding requirements, maps or plats submitted with the application for an aquifer storage and retrieval project shall include the following, if applicable:

(1) an overall plan of the project area showing the locations and extent of the proposed works and the locations of all pertinent features, including structures, pipelines, roads, natural springs, artesian wells and property lines. Also, such plan shall include all proposed or existing injection and retrieval facilities, by course and distance from a corner of an original land survey and/or other survey point of record, associated with the aquifer storage and retrieval project;

(2) name(s) and location(s) of the underground formation(s) in which state water will be stored for later retrieval and the general direction of flow indicated;

(3) cross sections and profiles of the underground formation(s) into which water will be injected and stored, any underground formation which confines the injection interval, any underground formation(s) located between the storage area and the land surface and the actual and/or proposed operating depths of all planned injection and retrieval facilities;

(4) if applicable, the location of any area or areas proposed for underground storage which would be within any part or portion of a critical area designated or proposed for designation by the commission under Chapter 294 of this title (relating to Underground Water Management Areas).

(5) for Phase II projects, the location of a buffer zone surrounding the land surface area under which the underground storage of state water will occur and beyond which pumpage by other wells will not interfere or significantly affect the movement or storage of the state water.

(6) for Phase II projects, the location and ownership of all existing domestic, public water supply, irrigation, or commercial wells within one-quarter mile of the perimeter of the buffer zone described in this subsection, indicated by appropriate symbols to differentiate these works from the proposed works;

(7) all elevations shall be referred to mean sea level datum;

(8) any additional information the executive director may require to determine the feasibility of the project.